

**SECTION II - TO BE COMPLETED BY THE PROCESSING EEO OFFICER (EEOO)**

18a. NAME OF COMPLAINANT		18b. SOCIAL SECURITY NUMBER	18c. DA DOCKET NUMBER
18d. TYPED/PRINTED NAME OF EEOO		18e. ADDRESS OF EEO OFFICE ( <i>Complete address to include office symbol</i> )	
18f. EEOO TELEPHONE NUMBER			
18g. EEO OFFICE FAX NUMBER			
18h. EEOO E-MAIL ADDRESS		18i. SIGNATURE OF EEOO	
19a. DATE COMPLAINT RECEIVED (YYYYMMDD)		19b. METHOD OF DELIVERY <input type="checkbox"/> IN PERSON <input type="checkbox"/> MAIL (postmark date) (YYYYMMDD) <input type="checkbox"/> FAX <input type="checkbox"/> OTHER _____	
19c. DATE COMPLAINT DEEMED FILED (YYYYMMDD)			
19d. DATE COMPLAINT ACCEPTED OR DISMISSED (YYYYMMDD)			
20. IDENTIFY ISSUES IN BLOCK 10 BY PLACING AN <b>A</b> FOR ACCEPTED OR A <b>D</b> FOR DISMISSED IN APPLICABLE BOX (es)			
APPOINTMENT/HIRE	EXAMINATION/TEST	REINSTATEMENT	
ASSIGNMENT OF DUTIES	EVALUATION/APPRaisal	REPRIMAND	
AWARDS	HARASSMENT (non-sexual)	RETIREMENT/CONSTRUCTIVE DISCHARGE/RESIGNATION	
CONVERSION TO FULL TIME	HARASSMENT ( sexual)	SUSPENSION	
DETAIL	PAY/OVERTIME	TERMINATION	
DEMOTION	PROMOTION/NON-SELECTION	TIME AND ATTENDANCE	
DISCIPLINARY ACTION (other)	REASSIGNMENT-REQUEST DENIED	TRAINING	
DUTY HOURS	REASSIGNMENT-DIRECTED	TERMS/CONDITIONS OF EMPLOYMENT	
<input type="checkbox"/> OTHER (Specify) _____			

21. REMARKS

## AMENDED FORMAL COMPLAINT OF DISCRIMINATION (DA Form 2590)

### OF DON MIKKO - Continuation Page:

#### ITEM 10

This complaint is based on a continuing pattern of harassment involving abusive personal confrontations, informal letters, formal letters alleging criminal and other misconduct, and performance reviews based on false statements of fact. The principal actor in this matter is Mr. Richard Tontarski, Chief FAD, USACIL. Prior to the employment of Mr. Tontarski at the USACIL in 2007, I enjoyed an unblemished career encompassing twenty-one years of active duty in the US Army, the majority of which as a USACIDC Special Agent and eight years of civilian employment with USACIL. Without exception I received the highest possible performance ratings.<sup>1</sup>

While my age and disability may make me a target for discrimination in general, the reason I specifically ascribe a discriminatory motive to Mr. Tontarski is that he has publicly and repeatedly made statements hostile to older employees, employees with disabilities and retired military. He has been particularly hostile to veterans with disability employment preferences (age & disability). Additionally, Mr. Tontarski's hostility towards me increased following my support for the hiring of a minority applicant who has subsequently filed an EEO Complaint due to his non-selection. Much of Mr. Tontarski's hostile conduct towards me can be directly related to my support of the minority applicant. The following are examples of Mr. Tontarski's conduct toward me:

1. Over the course of Mr. Tontarski's tenure with the USACIL disparaging actions directed towards me have been almost daily occurrence. An early example involved the hiring of the RBOC students beginning in May 2008, Mr. Tontarski repeated questioned my judgment in making the selections. *In particular, his interest was focused on Mr. Albert D. Bell who is a minority.* It was related to me that while Mr. Tontarski was on temporary duty in Arizona with three other USACIL managers, one of the managers stated to the group words to the effect, "can you believe Mikko is going to hire Coffey's kid and he is even going to hire a minority." Mr. Tontarski's response to the comment was laughter. Subsequently, Mr. Tontarski came to my office and took issue with the selections, Mr. Bell in particular. During this conversation I confronted Mr. Tontarski about the inappropriate comments regarding hiring minorities and he became irate, but failed to deny the fact.

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<sup>1</sup> Between 1990 and 2006, both as active military and civilian employee, I was rated by Mr. Larry Chelko, Director, USACIL.

2. Mr. Tontarski has regularly interfered with the operation of the Firearms Branch. As an example, June 1009 I submitted all five Reach Back Operations Center ("RBOC") students for a five percent pay raise based on their outstanding academic performance. Several months later Mr. Tontarski, ignoring my recommendations, decided to give pay raises to only two of the five with no justification for his selection. One of the two selected was, in fact, the son of another branch chief who is know to be on friendly terms with Mr. Tontarski. This led to an investigation by USACIDC, undermined my authority as a division chief, resulted in unsupported criticism directed at me personally, and demoralized the employees not selected.

3. In mid 2009 a permanent position became available in the Firearms Branch. Mr. Bell was selected as the number two candidate for the position by the Selection Panel. This first candidate declined the position and Mr. Bell was identified to Mr. Tontarski and the personnel branch as the leading candidate. Rather than select Mr. Bell, Mr. Tontarski instructed me to check the references for the third candidate, but no selection was made. Approximately four months later Mr. Tontarski re-contacted the first candidate and convinced him to accept the position with a delayed start date.

4. During several hiring actions over the past two years Mr. Tontarski has made statements to me and others critical of hiring military retirees and in particular those having veteran's preferences virtually all of whom are over forty years of age. His influence has resulted in these individuals either being denied employment or being forced to accept lower wages than those not similarly situated.

5. On September 4, 2009, I received a Letter of Reprimand signed by Mr. Tontarski stating among other allegations, that I had committed a criminal act, violation of 18 U.S.C. § 1905. On December 10, 2009, I received a letter from USACIDC setting aside the criminal violation. But, as of the date of my filing my EEO complaint the original letter remains in my file.<sup>2</sup>

6. On January 12, 2010, I received my final NSPS evaluation for 2009. Upon review, I found that the evaluation mirrored Mr. Tontarski's evaluation for 2007 in that it contained numerous misstatements of fact casting a negative impression of my job performance. This is the third less than accurate evaluation I have received from Mr. Tontarski. I was specifically criticized for attention to "hiring." At a subsequent meeting, Mr. Tontarski stated that the basis for this criticism "was there was no feasible way that Mr. Bell could be my second candidate because he does not have a college degree." In fact, CPO had ruled Mr. Bell a qualified applicant, a college degree was not a requirement for

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<sup>2</sup> I verified this on March 10, 2010, through Ms. Karen Hill, Chief, Personnel Office.

the position and the selection process had involved a selection panel that ranked Mr. Bell. Another example of an obviously false derogatory statement in my evaluation was that, “firearms vault inventory process needs adjustment to facilitate reconciliation with property book.” In fact, there was 100% accountability in the inventory.

7. As noted above, based on his public statements, statements made to me and the effect on hiring at USACIL, Mr. Tontarski’s discriminatory conduct based on age and disability, has resulted in the failure Firearms Branch to hire three highly qualified firearm and toolmark examiners who were veterans with disability preferences.<sup>3</sup> Mr. Tontarski has attempted to direct the circumvention of EEO hiring by the implementation of “selective placement factors.”

8. In March 2010 Mr. Tontarski singled me out to prepare a detailed “business plan” addressing non-existent problems in the Firearms Branch; such as reducing backlogs and turnaround times, assigning cases to the examiners, and coming up with new “metrics” across the board. Other branch Chiefs who have higher backlogs and turnaround times were not been required to develop such detailed plans. After I mentioned this matter to Mr. Chelko, Mr. Tontarski met with at least other branch's employees and discussed a plan to have a contractor come into the lab and assist them with casework. This so called “business plan” is in fact nothing more than a covert performance plan devised to facilitate criticism without the required supporting justification.

#### **ITEM 14**

Remove all letters and evaluations not supported by fact from my file.

Eliminate discriminatory practices based on age and disability for the operation of USACIL.

Actual, consequential and non-damages at determined to be appropriate at the hearing of the case.

#### **ITEM 16**